
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

versus

MARCO RODRIGUEZ (6)

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CASE NO. 1:18-CR-87

MEMORANDUM AND ORDER

Pending before the court is Defendant Marco Rodriguez’s (“Rodriguez”) Motion to Suppress Illegally Obtained Statement (#272). Having considered the motion, the submissions of the parties, the record, and the applicable law, the court is of the opinion that Rodriguez’s motion should be DENIED.

I. Background

On June 5, 2019, a United States Grand Jury sitting for the Eastern District of Texas returned a two-count Third Superseding Indictment charging Rodriguez in Count One with Conspiracy to Possess with the Intent to Distribute and Distribution of a Controlled Substance, in violation of 21 U.S.C. § 846, and in Count Two with Conspiracy to Launder Monetary Instruments, in violation of 18 U.S.C. § 1956(h), (i). Trial is currently set to begin on November 19, 2019.

II. Analysis

“Rule 12(c) of the Federal Rules of Criminal Procedure authorizes a district court to set a deadline for the filing of pretrial motions, including motions to suppress evidence.” *United States v. Oliver*, 630 F.3d 397, 411 (5th Cir.), *cert. denied*, 565 U.S. 1063 (2011); *accord United States v. Garcia*, 488 F. App’x 804, 809 (5th Cir. 2012), *cert. denied*, 571 U.S. 854 (2013);

United States v. Knezek, 964 F.2d 394, 397-98 (5th Cir. 1992). Pursuant to this rule, “if a party does not meet the deadline for making a [motion to suppress evidence], the motion is untimely. But a court may consider the defense, objection, or request if the party shows good cause.” FED. R. CRIM. P. 12(c)(3); *see United States v. Trujilo-Molina*, 678 F. App’x 335, 337 (6th Cir. 2017). Thus, courts have discretion in granting or denying untimely motions to suppress. *See Trujilo-Molina*, 678 F. App’x at 338; *Garcia*, 488 F. App’x at 809 (finding that the trial court did not abuse its discretion in choosing not to hold a hearing on the merits of a motion to suppress filed after the deadline); *United States v. Wilson*, 229 F.3d 1147, 2000 WL 1239051, at *1 (5th Cir. July 31, 2000). The good cause standard is “flexible” and “heavily dependent on the facts of the particular case.” *Trujilo-Molina*, 678 F. App’x at 338. “At a minimum, a party must ‘articulate some legitimate explanation for the failure to timely file.’” *Id.* (quoting *United States v. Walden*, 625 F.3d 961, 967 (6th Cir. 2010)). In reviewing the trial court’s decision to grant or deny an untimely motion to suppress, the Fifth Circuit will give “due consideration to the movant’s reason for missing the relevant deadline and any prejudice the refusal might occasion.” *United States v. Denman*, 100 F.3d 399, 402 (5th Cir. 1996), *cert. denied*, 520 U.S. 1121 (1997); *accord United States v. McLean*, 150 F. App’x 249, 253 (5th Cir. 2005), *cert. denied*, 547 U.S. 1041 (2006).

Rodriguez’s instant motion to suppress was filed on November 6, 2019, well after the October 15, 2019, deadline for filing a motion to suppress. The motion broadly asserts that on May 13, 2019, Rodriguez was arrested “without legal warrant, probable cause or lawful authority” and that evidence was obtained unlawfully. Rodriguez seeks suppression of “any statement made by the Defendant to law enforcement agents while unlawfully in their custody and

any evidence that was obtained without a warrant or with a warrant whose affidavit was based on an unreliable confidential source.” Rodriguez does not, however, articulate any viable explanation or good cause for his failure to file the motion to suppress in a timely manner. Moreover, mere suspicions of illegality are insufficient to warrant a suppression hearing. *See United States v. Hinojosa*, 392 F. App’x 260, 261 (5th Cir. 2010) (“‘General or conclusory assertions’ are insufficient to warrant a [suppression] hearing.”); *United States v. Jones*, 614 F.2d 80, 82 (5th Cir.) (finding that conclusory statements are insufficient to establish a Fourth Amendment claim), *cert. denied*, 446 U.S. 945 (1980); *United States v. De La Fuente*, 548 F.2d 528, 534 (5th Cir. 1977) (“[D]efendants must at least allege particular facts which would tend to indicate some government impropriety and that general, conclusory allegations based upon mere suspicions do not entitle a defendant to have evidence suppressed.”); *see also Franks v. Delaware*, 438 U.S. 154, 171 (1978) (“To mandate an evidentiary hearing, the challenger’s attack must be more than conclusory and must be supported by more than a mere desire to cross-examine.”).

Rodriguez asserts that “[a]ny statement[s] obtained from the Defendant while unlawfully in the custody of law enforcement authorities were obtained in violation of the rights of the Defendant pursuant to the Fifth Amendment to the United States Constitution and should be suppressed.” Yet, as the Government points out, no statements were taken from Rodriguez. The Drug Enforcement Administration’s report of Rodriguez’s arrest clearly states that Rodriguez invoked his right to remain silent, and the agents honored his request. Therefore, in addition to this motion being untimely, it is moot with respect to this issue because Rodriguez made no statements.

Rodriguez initially maintains that “[a]ny evidence obtained or seized was accomplished without a warrant.” Then, contradicting his prior assertion, Rodriguez claims that “[a]ny evidence obtained or seized with the execution of a warrant or after the execution of a warrant was done so by using a confidential source that is unreliable and that at [sic] some or all of the transactions [the confidential source] was under the influence of illegal narcotics.” The record contains two search warrants for residences in Houston which are associated with Rodriguez and his family. The warrants are regular on their face and were approved by a federal magistrate judge in the Southern District of Texas.

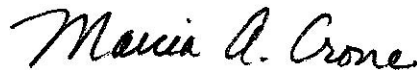
Although the affidavits underlying the search warrants at issue rely in part on information gleaned from confidential informants to support the affiant’s belief that Rodriguez committed a crime, they also contain other information for the magistrate’s consideration regarding the informants’ criminal histories and their potential receipt of judicial consideration from state authorities. In addition, the affidavits rely on video and audio recordings and law enforcement surveillance of drug transactions involving Rodriguez. The information contained in the affidavits goes far beyond mere subjective beliefs expressed by unidentified persons, replete with “speculation and conjecture.” *See United States v. Myles*, 307 F. Supp. 3d 676, 681 (E.D. Mich. 2018); *see also Poolaw v. Marcantel*, 565 F.3d 721, 731-32 (10th Cir. 2009). There is ample evidence to support the magistrate judge’s determination that probable cause existed for the issuance of the search warrants. The magistrate judge made “a practical, common-sense decision” that, given the totality of the circumstances, there was “a fair probability that contraband or evidence of a crime” would be found at the residences at issue. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Rodriguez has failed to articulate sufficiently detailed facts suggesting that further

investigation regarding the reliability of the search warrants is warranted, and the court has found none. Hence, Rodriguez's challenge to the search warrants must be rejected, as he has failed to show that the affidavits on which the search warrants are based are "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *United States v. Leon*, 468 U.S. 897, 923 (1984).

IV. Conclusion

Consistent with the foregoing analysis, the Rodriguez's Motion to Suppress (#272) is DENIED as untimely, partially moot, and otherwise without merit.

SIGNED at Beaumont, Texas, this 14th day of November, 2019.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE